



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.01.2017
CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

WEB COPY

W.P.(MD) No.3933 of 2011

N.Kannaiya

... Petitioner

Vs.

1. The District Collector
Thanjavur District, Thanjavur.
2. The Revenue Divisional Officer,
Pattukottai, Thanjavur District.
3. The Tahsildar
Peravoorani, Thanjavur District.
4. The Tahsildar
Pattukottai, Thanjavur District

... Respondents

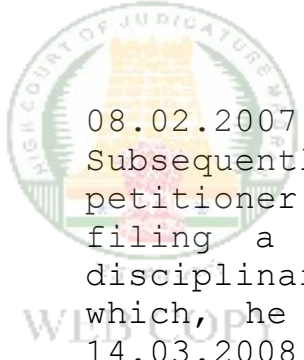
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the pertaining to the impugned order in Na.Ka.No.865/2007/A1 dated 12.08.2010 passed by the 2nd respondent and consequently the order passed in Na.Ka.No.865/2007/A1 dated 12.10.2010 and quash the same as illegal and direct the respondents to regularise the petitioner's suspension period as a period spent on duty with all attendant benefits.

For Petitioner : Ms.S.Srimathy
For respondent : Mr.V.Muruganandam
Additional Government Pleader

ORDER

The prayer in the writ petition is for a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.865/2007/A1 dated 12.08.2010 passed by the 2nd respondent and consequently the order passed in Na.Ka.No.865/2007/A1 dated 12.10.2010 and quash the same as illegal and direct the respondents to regularise the petitioner's suspension period as a period spent on duty with all attendant benefits.

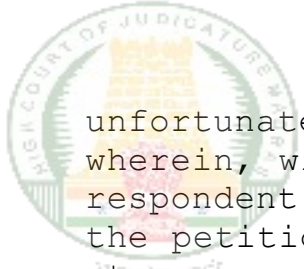
<https://hcservices.courts.gov.in/hcservices/>
2. The petitioner, while he was working as Village Administrative Department, had been suspended by order dated



08.02.2007 pending an enquiry contemplated against him. Subsequently on 15.11.2007, a charge memo was issued against the petitioner. Though the petitioner had approached this Court by filing a writ petition in W.P.No.1160/2008 against the said disciplinary proceedings, he became unsuccessful and pursuant to which, he had given an explanation to the said charge memo on 14.03.2008. Thereafter, he had also filed a representation to the District Collector to complete the enquiry. However, since the said representation dated 15.03.2008 had not been considered, the petitioner again filed a writ petition in W.P.No.2889/2008 before this Court and this Court, by order dated 28.03.2008, directed the authorities to consider the representation of the petitioner. Thereafter, the petitioner was reinstated into service by orders of the second respondent dated 28.05.2008, in and by which, the petitioner's suspension has been revoked and he had been given posting as Village Administrative Officer, Karambakudi, Pattukottai Division. Thereafter, he joined service and was working. However, again, the petitioner was suspended by orders of the respondent dated 10.11.2008. Challenging the same, the petitioner had again approached this Court by filing W.P.No.324/2009, wherein, by orders dated 28.01.2009, the said suspension order was quashed and pursuant to which, the petitioner was again reinstated on 09.03.2009. Thereafter, posting was given as such and the petitioner had been working. Ultimately, the petitioner since had reached superannuation on 30.11.2014, he was allowed to retire and was retired peacefully. Subsequently, by the impugned order dated 12.08.2010, a punishment was imposed on the petitioner based on the charge memo dated 15.11.2007 and also the request of the petitioner to regularise the suspension period for two spells as stated above was also rejected. However, in the second order dated 12.10.2010, which is also impugned herein as a consequential order, the second suspension period was directed to be regularised, whereas the respondents have refused to regularise the first suspension period. Challenging the said impugned orders dated 12.08.2010 and the consequential impugned order dated 12.10.2010, the petitioner has come out with the present writ petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. The learned counsel for the petitioner would contend that insofar as the first impugned order dated 12.08.2010 is concerned, pursuant to the charge memo, an explanation was given and thereafter, the petitioner was expecting that by accepting the explanation, the charges would be dropped, otherwise, if the respondents did not agree with the explanation given by the petitioner, there would be a departmental enquiry proceeded against him. The petitioner and if such enquiry is contemplated, the petitioner was thought of cooperating with the department for hearing of such departmental enquiry at the earliest. However,

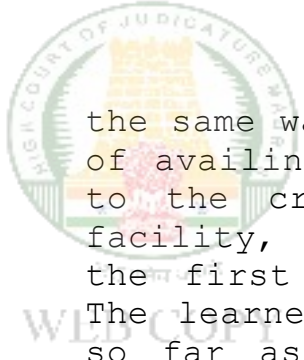


unfortunately, the impugned order dated 12.08.2010 was passed, wherein, without having conducted any departmental enquiry, the 2nd respondent has concluded that all the three charges framed against the petitioner, even proved and with the result, the punishment of stoppage of increment without cumulative effect has been inflicted on the petitioner. In this regard, the learned counsel for the petitioner would contend that no departmental enquiry has been conducted. Merely based on the explanation given by the petitioner, without affording an opportunity of being heard or conducting an enquiry or without giving any chance for the petitioner to access with the record, if any, based on which, such conclusion arrived at by the 2nd respondent, such an order was passed inflicting the punishment on the petitioner. Therefore, the learned counsel for the petitioner would contend that the very impugned order inflicting the punishment on the petitioner is totally in violation of the principles of natural justice and also against the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

5. The learned counsel for the petitioner would further contend that insofar as the consequential impugned order dated 12.10.2010 is concerned, though the 2nd respondent has agreed to regularise the suspension period ie., the 2nd suspension period between 14.11.2008 and 16.03.2009, had refused to regularise the suspension period between 08.02.2007 and 04.06.2008 ie, one year three months and 25 days.

6. Now, in the consequential impugned order, the 2nd respondent has stated that the said one year period could be regularised only by giving earned or unearned leave to the petitioner. In this regard, the learned counsel for the petitioner would contend that since the suspension itself is revoked by the own action on the part of the 2nd respondent and posting order was given to him by the proceeding issued by the 2nd respondent dated 28.05.2008, the said suspension period should have been regularised as a duty period for all purposes including continuity of service. Therefore, both the impugned orders, according to the learned counsel for the petitioner, are infirm and are liable to be interfered with by this Court.

7. Per contra, the learned Additional Government Pleader would contend that the petitioner, admittedly, had not been in service during the said period ie., between 08.02.2007 and 04.06.2008 for one year three months and 25 days, during the said period, he was paid subsistence allowance. Thereafter, based on the charges framed against the petitioner, after having considered the explanation submitted by the petitioner, punishment of stoppage of increment without cumulative effect for one year was imposed on the petitioner. Since the very charges ended in punishment and only on pendency of the charges, the petitioner was placed under suspension, the said period cannot be regularised and if at all



the same want to be regularised, the same can be given only by way of availing earned or unearned leave, if such leave is available to the credit of the petitioner. In absence of any leave, facility, certainly, the petitioner cannot seek regularisation of the first suspension period between 08.02.2007 and 04.06.2008. The learned Additional Government Pleader would also submit that so far as the 2nd suspension period, the very order, which is impugned herein dated 12.10.2010 itself has agreed that the said period between 14.11.2008 and 16.03.2009 can very well be regularised by giving the salary to the petitioner, after deducting the subsistence allowance already paid to the petitioner during the said period.

8. Insofar as the 2nd impugned order, under which, punishment has been imposed on the petitioner is concerned, the learned Additional Government Pleader would submit that this Court by order dated 28.03.2008 directed the respondents therein to consider the grievance of the party-in-person as put forth by him in his representation dated 15.03.2008 and pass orders on merits and in accordance with law within a time frame.

9. Only pursuant to the orders of this Court, the explanation given by the petitioner for the charges framed against him was carefully considered by the 2nd respondent, being the disciplinary authority and after having considered each of the explanation given by the petitioner for every charges framed against him, a reasoned order was passed, by which, a minimum punishment of stoppage of increment without cumulative effect was imposed on the petitioner. Therefore, there is absolutely no infirmity attached with the said impugned order and hence, there is no requirement to interfere in the said impugned order, the learned Additional Government Pleader contended.

10. This Court had considered the rival submissions made on either side and perused the materials placed before this Court.

11. Insofar as the first impugned order dated 12.08.2010 is concerned, it is an order of punishment inflicted on the petitioner, whereby, stoppage of increment without cumulative effect was imposed. On perusal of the order, this Court finds that after having receipt of the explanation given by the petitioner, no opportunity was given to the petitioner, as to whether the petitioner wants to have the oral enquiry or not and therefore, on this ground alone, the impugned order cannot be sustained. Since the law is well settled in this regard that no one can be punished without giving a full opportunity of being heard by way of departmental enquiry to arrive at a conclusion based on the proposition of preponderance of probabilities, such Government servants cannot be punished, whether it is a minor or major punishment. Here, in this case, admittedly, without giving such an opportunity to the petitioner, the punishment was imposed.



Therefore, the impugned order dated 12.08.2010 would not stand in the legal scrutiny and in that view of the matter, it is liable to be quashed and accordingly, quashed.

12. Insofar as the 2nd/consequential impugned order dated 12.10.2010 is concerned, two aspects are there, whereby, the request of the petitioner to regularise the suspension period in two spell had been dealt with. Insofar as the 2nd spell of the suspension is concerned, ie., 14.11.2008 and 16.03.2009, the order itself has agreed to regularise the said suspension period by giving full salary to the petitioner, after deducting the subsistence allowance. Insofar as the first suspension period, ie., between 08.02.2007 and 04.06.2008 for one year three months 25 days, the order passed by the 2nd respondent is totally unjustifiable, because of the reason that the suspension dated 08.02.2007 was inherently rejected by the respondent themselves and only pursuant to the revoking of the suspension, further posting order by way of reinstatement or posting had been given to the petitioner by order of the 2nd respondent dated 28.05.2008. In the above said order, it is clearly mentioned that the petitioner under suspension has been given posting to a place called Karambakudi as Village Administrative Officer, which means that till such an order is passed, the petitioner was under suspension and once posting given to the petitioner, which means the suspension had been revoked. Whether the suspension has been revoked on their own or pursuant to the directive of any higher authorities or the directions issued by any Court of law, the effect is one and the same.

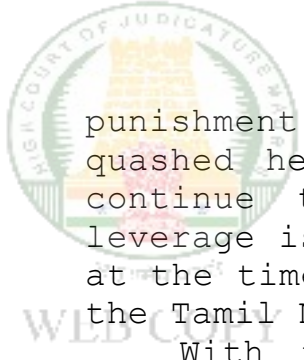
13. Once the suspension is revoked and the person is given posting, by way of reinstatement, then, certainly, the service period has to be regularised for all purposes, which include continuity of service, pay benefits etc. When the 2nd respondent accepts the suspension period in the second spell for regularisation, this Court does not understand the logic behind the refusal on the part of the 2nd respondent to regularise the suspension period for the first spell. Therefore, this Court is of the considered view that the consequential impugned order dated 12.10.2010 is also liable to be interfered with and accordingly, the same is also quashed.

14. Resultantly, the following order is passed in the writ petition:

(i) The impugned orders dated 12.08.2010 and 12.10.2010 are quashed;

(ii) The second respondent is directed to regularise the suspension period of the petitioner for both spell ie., between 08.02.2007 and 04.06.2008 and also between 14.11.2008 and 16.03.2009. Consequently the said period also shall be accounted for the purpose of continuity of service and all service benefits ;

(iii) Insofar as the disciplinary proceedings, which ended in



punishment in the said impugned order dated 12.08.2010, which is quashed herein, is concerned, it is open to the respondents to continue the disciplinary proceedings, provided, if any such leverage is withheld by the department by relieving the petitioner at the time of superannuation to invoke the provision of Rule 9 of the Tamil Nadu Pension Rules, 1978, in the manner known to law.

With these directions, the writ petition is allowed. No costs.

Sd/-
Assitant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. The District Collector
Thanjavur District, Thanjavur.
2. The Revenue Divisional Officer,
Pattukottai, Thanjavur District.
3. The Tahsildar
Peravoorani, Thanjavur District.
4. The Tahsildar
Pattukottai, Thanjavur District.

+1cc to M/s.S.M.S.JOHNNY BASHA, Advocate, in SR No.1298
+1cc to Special Government Pleader, Sr.No. 1522

RR

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W.P.(MD) No.3933 of 2011
06.01.2017